

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. On February 24 or 25, 2000, the petitioner came into the district office of the Department of Social Welfare to ask for Food Stamp and fuel assistance applications. He was given these applications and was told by the receptionist that he needed to bring back the Food Stamp application but that the fuel application could be mailed to Waterbury. The petitioner was not advised by the receptionist that an application deadline was looming in four or five days for the fuel program. However, that information was contained in writing in the application handed to him. The receptionist usually does mention the deadline to clients who pick up fuel

assistance applications within a day or two of the deadline, telling them to bring the completed applications back to the office instead of mailing them.

2. The fuel application consists of four pages. At the top of the fourth page the following paragraphs are flagged by bold type:

When to Apply

The time to apply is from July 15 through August 31. If you miss the application period, you may apply until the last day of February. If you apply after the last day in February, you will be denied; there are no exceptions.

How to Apply

Fill out the application form, sign it and mail it to:
Office of Home Heating Fuel Assistance, 103 South Main
Street, Waterbury, VT 05671-1201

You may also drop off the application at your local DSW office by August 31 or the last day in February.

3. On March 2, 2000, the petitioner personally returned his Food Stamp application to the district office. The application was dated March 1, 2000 and the accompanying statement of need was dated March 2, 2000. Although a future appointment was set up at that time, the petitioner insisted on speaking with an eligibility specialist at once. His specialist did speak with him for a brief time about his Food Stamp application. She was not aware that he had already picked up a fuel application and the petitioner did not inform

her of that fact. She advised the petitioner at that time that he should pick up and file a fuel application even though the deadline had passed so the Office of Home Heating Fuel Assistance would have his name and address for next year's mailing. The petitioner claims that this conversation never took place but his claims were contradicted by the credible testimony of the receptionist and the eligibility specialist.

4. At some point, the petitioner filled out the fuel assistance form and signed and dated it February 28, 2000. The postmark on the envelope was dated March 2, 2000, although the petitioner claims he mailed it February 28 or 29. It was received by the Office of Home Heating Fuel Assistance on March 3, 2000.

5. On March 20, 2000, the Office of Home Heating Fuel Assistance mailed a notice to the petitioner advising him that his application had been denied for his failure to submit his application by February 29, 2000. The petitioner claims that he never received that letter but learned of his ineligibility when he called the OHHFA around that same date.

6. The petitioner says that he was not aware of the deadline when he mailed his application to Waterbury. He says he "glanced" at the fourth page of the fuel application containing the deadline and mailing information but did not

think it was applicable to him and did not read it carefully. He places the blame for his failure to file a timely application on the receptionist who, he claims, had a duty to tell him about the deadline orally.

7. The petitioner applied for and received benefits under the "emergency" fuel assistance program in early April of 2000 which consisted of a one hundred-gallon delivery of fuel oil.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations adopted by the Department of Social Welfare provide that the fuel application period ends "on the last day of February" and that applications which are mailed will be considered received by the "date of the postmark." W.A.M. 2902.1. Under these rules, the petitioner's application was deemed to have been received on March 2, 2000, the date of the postmark of his application. That date is two days beyond the final date for acceptance of applications, which for this year was February 29. Under the Department's rules, the lateness of the application requires a finding that

the petitioner is not eligible for supplemental fuel assistance benefits for the 1999-2000 fuel assistance year.

W.A.M. 2902.1.

The petitioner argues, however, that the lateness is the result of the Department's failure to orally advise him of the deadline and his right to file an application at the district office. The Department's failure to do its duty, in his view, caused him to file late and should now act as a bar to his disqualification. The petitioner's argument is in the nature of "estoppel", a concept that precludes a state agency from enforcing its rules if its own actions misled an applicant from taking appropriate or timely action. The four essential elements of estoppel are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the facts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. Finally, in matters which affect the public sector, a final question must be answered as to whether the injustice to the petitioner if estoppel is not invoked outweighs any public interest in strictly applying the deadline limitation.

Burlington Firefighters' Ass'n. v. City of Burlington, 149 Vt. 293 (1988).

There is no question that the Department of Social Welfare has an obligation to advise applicants of their rights and obligations in the various programs it operates. See Lavigne v. Department of Social Welfare 139 Vt. 114 (1980)(ANFC program) and Stevens V. Department of Social Welfare 159 Vt. 408 (1992)(Medicaid program). With regard to the first element of estoppel, it is clear that the Department of Social Welfare was aware of the deadlines and the procedures for accepting applications for fuel assistance and of the need to communicate these to applicants for assistance. With regard to the second element, the Department did communicate deadline and filing information to all applicants in writing and intended that applicants rely on that information in applying for benefits. There is no evidence that the petitioner received any information contradicting the written statement that was provided to him. The third element requires that the applicant be ignorant of the deadlines. The petitioner clearly was ignorant of the deadlines when he went in to get an application but should not have been ignorant after reading the written information provided to him by the Department. Finally, had the petitioner relied on the

information which the Department did give him, he would have been able to make a timely application by bringing the completed information to the office on or before February 29. He admits, however, that he never read that information.

The petitioner's argument is essentially that the Department should have provided him with a second form of oral notice since the deadline was approaching. There is no question that such information could have been helpful to the petitioner. However, there is nothing in any regulation which requires that specific kind of additional notice. The petitioner appears to have had information in his possession for four or five days before the deadline which clearly warned him of the deadline and his right to file for benefits in the district office. By his own admission, he filled out the forms that contained the deadline information on February 28, 2000, the day before the deadline. Had he read the forms thoroughly, including the bold print on the last page, he would have learned that he could have filed that application in person in the district office by February 29, 2000 and preserved his eligibility. It must be concluded that the petitioner's failure to file on time is ultimately a result of his own inadvertence rather than any misfeasance on the part of the Department. It cannot be found that there is any

justification to prevent the operation of the deadline
disqualification in this matter.

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